

BAD FAITH BLOG

# Court Takes Insurer's Side When Coverage Defense is Bona Fide

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*West Bend Mut. Ins. v. Norton*, 940 N.E.2d 1176 (Ill. App. 3 Dist. 2010)

An Illinois Appellate Court recently upheld summary judgment in favor of an insurer on the insured's vexatious refusal to settle claim. The insured driver, Wanda Norton, was involved in a vehicle collision with Karyn Patterson. Norton was insured by West Bend and Patterson was insured by American Family. Norton hired counsel and filed suit against Patterson. Norton's counsel sent a demand letter to American Family to settle for approximately \$18,000. In response, American Family offered to settle Norton's claim for \$7,800. Norton rejected the settlement offer and filed suit.

Norton's counsel did not inform either American Family or West Bend of the filing of suit against Patterson. Eventually, a default judgment was entered against Patterson, and counsel for Norton did not inform American Family of the default judgment until 90 days after it was entered. As a result of the late notice, American Family denied coverage. After American Family denied coverage, Norton's counsel contacted West Bend asserting an uninsured motorist claim. West Bend maintained the only reason Patterson was "uninsured" was because Norton had failed to notify American Family of the lawsuit and judgment. Therefore, West Bend requested that Norton's counsel take steps to vacate the default judgment so West Bend could pursue its subrogation rights under the policy against American Family. Norton's counsel refused to vacate the judgment against Patterson and, instead, filed suit against West Bend seeking payment pursuant to the uninsured motorist provision of the West Bend policy. The Court ordered the suit to arbitration pursuant to an arbitration provision in the West Bend policy.

While the claim was pending in arbitration, West Bend filed its declaratory judgment action seeking to determine whether it was obligated under the policy because Norton's actions violated the cooperation clause and compromised West Bend's ability to pursue subrogation against American Family. West Bend filed a Motion for Summary Judgment maintaining because Norton breached her duty under the policy there was no coverage. The Trial Court denied the Motion for Summary Judgment finding that West Bend failed to show "as a matter of law" that Norton had breached the policy.

Thereafter, the parties agreed to stay the declaratory judgment pending resolution of the arbitration proceedings. The arbitration panel issued a decision awarding Norton approximately \$7,000. West Bend promptly offered that amount to Norton's attorney on the uninsured motorist claim; however, the offer was refused.

Instead, Norton filed a counterclaim in West Bend's still pending declaratory judgment action seeking damages for vexatious and unreasonable delay pursuant to an Illinois statute allowing the award of attorney's fees and additional damages in cases where the insurer caused a delay in settling or paying a claim. 215 ILCS 5/155 (2004). The parties filed cross motions for summary judgment on Norton's counterclaim. The Court granted West Bend's Motion for Summary Judgment finding that after the arbitration finally occurred, Norton refused to accept the decision of the arbitration panel even though the parties had agreed to proceed to arbitration. The Court found that there were "bona fide" reasons for contesting coverage and West Bend had a good faith basis for denying and contesting the uninsured motorist claim of Norton.

In upholding the decision of the Trial Court, the Appellate Court found that West Bend had a "bona fide dispute with Norton due to Norton's failure to notify American Family of her suit and judgment which turned what would have been a claim payable by American Family into one where Patterson became an uninsured motorist. Moreover, there was a bona fide dispute as to whether Norton's failure to cooperate with West Bend's request to vacate her default judgment, which would have allowed West Bend an opportunity to secure reimbursement from American Family, was denied.

In order to maintain a vexatious delay in settling a claim, it must be rooted in an insurer's refusal to settle a claim. It was clear from the record that Norton was in total agreement to await the decision of the arbitration panel. Moreover, West Bend agreed to immediately comply with the arbitration ruling, but Norton refused. It was only at this point, some five years into the litigation, that Norton first raised an allegation that West Bend was responsible for unreasonable and vexatious delay. Any delay in resolution of this matter was attributable to Norton's rejection of the arbitration award and not any action on the part of West Bend.

It was not unreasonable for West Bend to file a declaratory judgment action to avoid coverage while the arbitration was pending. Norton argued West Bend was judicially estopped from continuing to seek a declaratory judgment after its Motion for Summary Judgment on the breach of the cooperation clause was denied. In denying West Bend's initial Motion for Summary Judgment, the Trial Court was not ruling on West Bend's liability, "it merely found that West Bend's claim that Norton violated the policy was a disputed question of material fact, and that West Bend was not entitled to judgment as a matter of law." Even though West Bend failed to initially prove a breach occurred as a matter of law does not mean that a breach did not occur. Instead, questions of fact remained as to whether there was or was not a breach. The question as to whether West Bend was obligated to pay the claim remained unresolved after West Bend's initial Summary Judgment motion was denied. Therefore, Norton had no basis upon which to maintain that West Bend's failure to pay the claim after the denial of the summary judgment motion was unreasonable and vexatious.

Although it took over five years, West Bend ultimately prevailed because it had “bona fide” defenses to the uninsured motorist claim and did not unreasonably delay settlement of the claim when it abided by the arbitration panel’s decision. It was Norton who should have accepted the arbitration panel’s decision and settled the claim, instead of pursuing a vexatious refusal claim in what we assume was an attempt to collect five years worth of attorney’s fees from the insurance company.